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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/522,974

02/01/2005

Robert Ashe

377.8168USU

2336

27623

7590

05/14/2009

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EXAMINER

FLANIGAN, ALLEN J

ART UNIT

PAPER NUMBER

3744

MAIL DATE

DELIVERY MODE

05/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/522,974	Applicant(s) ASHE ET AL.	
	Examiner Allen J. Flanigan	Art Unit 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-3,5,6,9,14 and 59-66 is/are pending in the application.
- 4a) Of the above claim(s) 59,60 and 63-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,9,14,61 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 59, 60, and 63-66 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/2/08.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 5, 6, 9, 14, and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Samesreuther et al.

Please see the comments made in regard to the above rejection in the previous Office action. The recitation added to claim 1 of a “reaction vessel” fails to distinguish over Samesreuther et al., which is clearly concerned with “plates or walls of vessels which are to be heated or cooled by passage of fluid through tubes carried thereby” (see first column of Samesreuther et al.).

Claims 1, 14, and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumann.

Please see the comments made in regard to the above rejection in the previous Office action. The recitation of a “vessel” added to claim 1 is not deemed to define over Baumann, since the term “vessel”, broadly construed, is deemed to include conduits of the type shown in Baumann with openings at both ends (in the same way that a blood vessel, for example, has two open ends). Moreover, as the device shown in Baumann involves a combustion

Art Unit: 3744

device for producing hot gases, it should implicitly be considered a “reaction vessel”, since combustion is an oxidation reaction.

Claims 1, 14, and 61 are rejected under 35 U.S.C. 103(a) as being obvious over Baumann in view of Matsumoto et al.

Assuming *arguendo* that the device shown in Baumann does not fully meet claim 1, it would nevertheless have been obvious to employ the tapered conduits surrounding the housing of Baumann in a closed ended container for exchanging heat with a confined fluid; Matsumoto et al. teach that it is known to provide enclosed vessels with either serially connected or parallel connected flow passages for heat exchange fluid in the jacket surrounding the vessel (see second paragraph of column 4). Thus, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to employ the tapered, parallel connected conduits of Baumann to exchange heat with an enclosed vessel/tank.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Samesreuther et al.

Please see the comments made in regard to the above rejection in the previous Office action.

Applicant's arguments filed 1/28/2009 have been fully considered but they are not persuasive.

Applicant's comments with regard to the above references concern the intended use of the claimed invention, i.e. for controlling the temperature of a

Art Unit: 3744

reaction. Claims to structure must be distinguished on the basis of structure, not intended use. See MPEP 2114. Such arguments, even if given weight, would nonetheless be unpersuasive regarding Samesreuther et al., as the reference clearly teaches an improved construction based on cast iron's lack of resistance to chemical reaction. Such a teaching would clearly suggest to one skilled in the art that the disclosed vessel, particularly when constructed of chemically resistant suggested materials such as monel, would obviously be useful for chemical reactions. Aside from general allegations that the cited patents do not "disclose or suggest the limitations of claim1", applicants in their comments fail to point to a single structural limitation which the cited prior art does not disclose.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In

Art Unit: 3744

no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (571) 272-4910. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Allen J. Flanigan/
Primary Examiner, Art Unit 3744